

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MICHAEL CAGLE,

Plaintiff,

vs.

9:04-CV-1151  
(TJM/GHL)

P. PERRY, Sergeant; J. PRICE, Correctional Officer;  
M. RILEY, Correctional Officer; W. EATON; and  
W. BROWN, Correctional Officer,

Defendants.

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THOMAS J. McAVOY,  
Senior United States District Judge

**DECISION & ORDER**

Plaintiff commenced the instant action pursuant to 42 U.S.C. § 1983, claiming violations of his right to due process under the Fourteenth Amendment and his right to petition the government for redress of grievances under the First Amendment, as well as alleging that the conditions of his confinement constitute cruel and unusual punishment prohibited by the Eighth Amendment. Presently before the Court is Plaintiff's motion for summary judgment and Defendants' cross-motion for summary judgment. This matter was referred to the Hon. George H. Lowe, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.4.

The Report-Recommendation dated September 19, 2007 recommended that the

Plaintiff's motion for summary judgment be denied, the Defendants' cross-motion for summary judgment be granted and Plaintiff's Third Amended Complaint be dismissed with prejudice.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

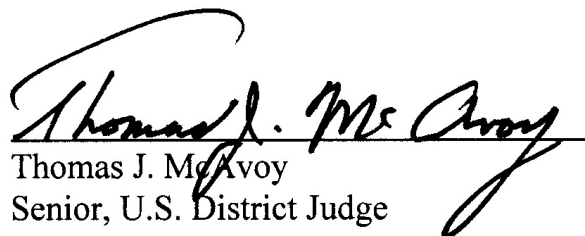
Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Lowe for the reasons stated in the Report-Recommendation.

It is therefore

**ORDERED** that Plaintiff's motion for summary judgment is **DENIED**, Defendants' cross-motion for summary judgment is **GRANTED** and Plaintiff's Third Amended Complaint is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

Dated: October 23, 2007

  
Thomas J. McAvoy  
Senior, U.S. District Judge

